

STATE OF CALIFORNIA

DEPARTMENT OF INSURANCE

In the Matter of: Proposed adoption or amendment of the Insurance Commissioner's regulations pertaining to pure premium rates for workers' compensation insurance and the California Workers' Compensation Experience Rating Plan—1995. These regulations will be effective on July 1, 2006.

FILE NUMBER RH 06-091268

DECISION AND ORDER¹

Since January of 2004, California has experienced a dramatic transformation of its workers' compensation system. That transformation has resulted in the current recommendation presented to me by the Workers' Compensation Insurance Rating Bureau (WCIRB), the rating organization licensed by my department that monitors workers' compensation costs, to further lower my advisory rate by an additional -16.4%, for a cumulative total rate decrease of -55.1% since July 1, 2003. The reasons for the latest proposed decrease include even lower loss costs in the system as a result of the workers' compensation reforms and a continuing decrease in the frequency with which workers' compensation claims are filed.

After analyzing the evidence concerning the workers' compensation pure premium rate decrease, my department's actuaries have reviewed the recommendation of the WCIRB and have concluded that the decrease should be even greater -- they have recommended a -18.9% decrease. This conclusion is based on the study by UC Berkeley's Frank Neuhauser of over 3,000 permanent disability ratings performed by the California Division of Workers' Compensation. The study shows that there has been a decrease of 57.5% in indemnity payments under the new permanent disability rating schedule. In all other aspects, the department's actuaries are in agreement with the determinations of the WCIRB.

My analysis of the various studies on the permanent disability benefit ratings under the new schedule leads me to conclude that the most seriously injured workers with objective findings of disability are not receiving fair compensation. The amounts those injured workers are receiving, on average, are one-half of what they previously were prior to the reforms. This decrease

¹ My powers as Insurance Commissioner with regard to workers' compensation insurance rates are limited to issuing only an advisory decision regarding the workers' compensation pure premium rates and examining the rates filed by insurers. California insurance law requires the WCIRB to analyze past cost trends and report to me its advice on the pure premium rates necessary to pay for the anticipated claims that will occur in the next year or within the next six months if related to an interim rate. I am required to conduct a hearing on the proposed rate change and then render a decision on the proposal. This decision then becomes an advisory rate increase or decrease for the workers' compensation insurance industry. However, I have no ability to require insurers to increase or decrease their rates, and the insurance companies are free to set their rates at any level so long as those rates are not so low as to adversely affect their financial stability.

reflects the exclusion of most of the injuries that have only subjective or questionable permanent disability findings under the American Medical Association Guides on impairment. The California Applicant's Attorneys Association testified that the Associations' members continue to challenge this permanent disability system in court. The system is flawed and needs to be fixed. Since I fully expect the Governor and the Legislature to deal with this issue now that the evidence is in, and since I know that a court challenge is underway, I must take the expected increase in benefits into account.

Second, I have received many complaints from injured workers and medical providers regarding the provision of medical benefits – it appears that utilization review is being over-used to unreasonably delay and deny medical care. Regulations designed to control the utilization review process have been introduced by the Acting Administrative Director of the Division of Workers' Compensation. These regulations should address the delays and improper denials of medical treatment requests and payments. This will likely lead to a rise in the costs of reasonable medical benefits, as well it should, so that injured workers can recover and return to work more quickly. I believe that having medical treatment guidelines and utilization review is necessary and effective; however, utilization review is not necessary for every request and must be used responsibly by insurers to be effective. It should not be an obstacle to reasonable and prompt medical treatment.

Based upon the information and testimony provided by the WCIRB, by the witnesses at the hearing held in this matter, and the recommendations of my department's actuaries, I have decided to accept the proposal of the WCIRB as the most reasonable adjustment to the workers' compensation pure premium rates. Therefore, I am ordering that the workers' compensation pure premium rates effective on or after July 1, 2006 be decreased by -16.4%. This results in a cumulative decrease of -55.1% from the July 1, 2003 Pure Premium Rates.

I hereby adopt the attached Proposed Decision and Proposed Order of Hearing Officer Christopher A. Citko as my Decision in the above entitled matter and hereby amend the Proposed Decision and Proposed Order to conform with my decision herein that the decrease of the workers' compensation pure premium rates be -16.4% effective July 1, 2006.

IT IS SO ORDERED THIS 31 DAY OF MAY, 2006.



JOHN GARAMENDI
Insurance Commissioner